

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALLSTATE INSURANCE COMPANY, *et al.*, :
 : 08-CV-04405 (PKC)
Plaintiffs, :
 :
v. : 225 Cadman Plaza East
 : Brooklyn, New York
MARK MIRVIS, *et al.*, :
 : February 10, 2020
Defendants. :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
BEFORE THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Proceedings began 11:33 a.m.)

2 THE CLERK: The Honorable Magistrate Judge Peggy Kuo
3 presiding. Civil cause for motion hearing, docket number 08-
4 CV-04405, Allstate Insurance Company, et al. v. Mirvis, et al.

5 Counsel, please state your name for the record,
6 starting with the plaintiffs.

7 MR. NATBONY: William Natbony from Cadwalader,
8 Wickersham & Taft, on behalf of plaintiffs. Good morning,
9 Your Honor.

10 MR. MARVIN: Daniel Marvin, Morrison Mahoney, also
11 for plaintiffs. Good morning.

12 MR. STERN: Rob Stern from Morrison Mahoney on
13 behalf of plaintiffs. Good morning, Your Honor.

14 MR. TSIRELMAN: Gary Tsirelman on behalf of Tatyana
15 Mirvis and Lyubov Mirvis. Good morning, Your Honor.

16 MR. BOWERS: Nicholas Bowers on behalf of Lyubov
17 Mirvis and Tatyana Mirvis.

18 THE COURT: Good morning, everyone. Sorry. My mic
19 wasn't on.

20 MR. NATBONY: Good morning, Your Honor.

21 MR. BOWERS: Good morning, Your Honor.

22 THE COURT: Okay. I was saying "good morning" to
23 everyone. So we're here on a hearing to consider the motion
24 that's been made by plaintiffs with regard to 289 Bayberry
25 Drive. My -- I guess, let me just start by asking, what is

1 the status of the home at the moment? Who -- who's living
2 there? What's -- there's a lien on it. Right. Like what is
3 happening?

4 MR. NATBONY: Sure. First of all, Your Honor, I did
5 have a conversation with Mr. Tsirelman before we began today
6 and my understanding is there is no -- there is going to be no
7 further submission of evidence before you today. So the
8 record is I know that Mr. Tsirelman and Mr. Bowers sent some
9 additional documents to the Court recently, which we looked at
10 and we'll be happy to address at the time that we present
11 argument to Your Honor.

12 But to answer your question directly, my
13 understanding is that Mark Mirvis, his wife, his daughter,
14 Tatyana, Tatyana's husband and a young child whose name I
15 won't put into the record for the moment, all live in the
16 house at the moment.

17 My understanding is that there are -- there is a
18 mortgage and a line of credit out on the property. The most
19 recent valuation on the property dated January 2, 2020 that
20 we've pulled off the Nassau County Department of Assessment
21 assesses the market value at over 1.4 million dollars. My
22 understanding is that the total outstanding based on the
23 mortga -- on the outstanding line of credit and looks to me to
24 be around --

25 What is it?

1 MR. TSIRELMAN: The mortgage -- Your Honor, in their
2 papers the mortgage amounts to approximately \$785,000.

3 MR. NATBONY: Right.

4 MR. TSIRELMAN: And the homestead exemption they
5 admit to be about \$170,000.

6 MR. NATBONY: Right. So the mor -- as I had read it
7 in docs 632, the mortgage and LCC balances are somewhere
8 between 750 and 800,000. We agree on that. And then the
9 exemption I believe, Your Honor, under the law is \$170,825.
10 So, you know, just so that we know this is not an exercise in
11 futility there is, in fact, equity in the property.

12 THE COURT: Okay. So can you explain -- I mean, I
13 don't think I understand how the homestead extension --
14 exemption works. What would that mean? That --

15 MR. NATBONY: I --

16 THE COURT: That's the amount of money that --

17 MR. TSIRELMAN: That's the amount of money that
18 cannot be garnished by a creditor.

19 THE COURT: Got it. That's what I thought it was.

20 MR. NATBONY: That -- that's my understanding and
21 that's provided for in the CPLR, Your Honor,

22 THE COURT: Right. Okay.

23 MR. NATBONY: Shall I --

24 THE COURT: So whatever the house is sold for, the
25 Mirvises would get that amount. All right.

1 MR. NATBONY: That's correct, Your Honor.

2 THE COURT: So let me ask another question before
3 you start, Mr. Natbony. Are you seeking to have the entire
4 house -- I mean, you can't sell half a house I guess. Maybe
5 you can, so that's what we should find out. But are you
6 seeking to have the whole house sold and to seize half of it
7 be -- as part of Mr. Mirvis's judgment?

8 MR. NATBONY: Happy to address that, Your Honor.

9 THE COURT: Okay.

10 MR. NATBONY: So I think there's no dispute that the
11 law allows us to execute on whatever that means on Mr. Mirvis'
12 interest in the property.

13 I guess the question is about the second half of the
14 property that Your Honor -- so our position is that under two,
15 in fact, cases now, that is the one in the Eastern District
16 and one in the Southern District, that is under the Clarkson
17 decision, 533 F. Supp. 905 and under the Hallmark Electronics
18 Corporation case out of the Eastern District. And that was
19 Judge Nickerson that, in fact, once the fraudulent conveyance
20 of the property was made and that Mrs. Mirvis participated in
21 that fraudulent conveyance, the tendency by the entirety is
22 dis -- is extinguished and, in fact, the law provides that we
23 would have the ability to execute on the entire of the house.

24 So that is our position. That is undisputed as a
25 matter of law that we have at least entitlement to the --

1 Mr. Mirvis's interest and under prevailing case law because of
2 Mrs. Mirvis's participation in the fraudulent conveyance it is
3 no longer a tendency by the entirety. It's now a tendency in
4 common and, in fact, we can execute on the entire -- and in
5 fact, you know, if you think about it, Your Honor, and the way
6 the courts have said the rationale for this, you know, there's
7 a good reason for that rule. And the rule is that when you
8 are looking at the wife's participation in the fraudulent
9 conveyance, and I think as Judge Nickerson said, if you don't
10 do what is set forth in the two cases that I've said,
11 essentially you are -- the Court is enabling these individuals
12 to accomplish precisely what they wanted to do, you know, in a
13 fraudulent conveyance.

14 So what they couldn't do by fraud you're now able to
15 accomplish by -- if the husband outlived the wife you'd be
16 essentially shielding half the property, you know, from
17 execution. And Judge Dickerson found -- Judge Owen found in
18 Clarkson that that result, which is allowing the ultimate-only
19 execution on half of the property after the wife has
20 participated, would offend justice. And that's our position
21 on that.

22 THE COURT: Right. And what is the fraudulent
23 conveyance here that Mrs. Mirvis participated in?

24 MR. NATBONY: If you recall, Your Honor, and Your
25 Honor issued the decision on this again. It's really

1 undisputed that Mr. Mirvis -- Mark Mirvis -- and his wife
2 transferred their interests to their daughter for \$10 in
3 consideration.

4 THE COURT: Right.

5 MR. NATBONY: And Your Honor will recall that Your
6 Honor found that to be a fraudulent conveyance and
7 essentially --

8 THE COURT: Reversed it.

9 MR. NATBONY: -- reversed it.

10 THE COURT: Right.

11 MR. NATBONY: And, you know, put it back. So that
12 is --

13 THE COURT: So even though that was unsuccessful
14 conveyance, the fact that they tried to do that is enough to
15 extinguish her portion of the house?

16 THE COURT: Yes, Your Honor. And, in fact, in both
17 cases that I mentioned they were reversed. So this wasn't a
18 situation where the conveyances stood or upheld. Conveyances
19 were reversed. One argument was made, oh, it goes back to the
20 original tendency and the entirety and the courts rejected
21 that argument in both of those cases.

22 THE COURT: But -- so I recall -- I don't remember
23 if those were exactly those cases, but in at least some of the
24 cases that I've seen they were a second home and not the
25 primary home.

1 MR. TSIRELMAN: Correct, Your Honor.

2 THE COURT: A vacation house and a pied-a-terre.

3 MR. NATBONY: But I don't --

4 THE COURT: So does that matter?

5 MR. NATBONY: I don't -- well, I think it doesn't
6 matter for that legal issue.

7 THE COURT: Right.

8 MR. NATBONY: I think. And I believe that at least
9 one of the cases, the Hallmark, was a primary home. But I
10 think it could be relevant to Your Honor's determination on
11 whether to under the CPLR deal with the hardship issue which
12 I'm happy to address. You know, I think -- you know, Your
13 Honor is intimately familiar with the family and the
14 fraudulent issues that have surrounded this family.

15 Mark Mirvis was found to be an active member of a
16 fraudulent insurance scheme involving sham companies with a
17 judgment of 45 million dollars. And the Court has been aware
18 of past instances where Mirvis has involved his family
19 members, you know, in assisting in this scheme. You will
20 recall not only Mrs. Mirvis and her daughter's participation
21 in this fraudulent conveyance, but there have been others
22 before Your Honor with respect to bank accounts of Mrs.
23 Mirvis -- I'm sorry, of Tatyana Mirvis that the debtor had
24 control over.

25 So, you know, I have -- I've said before that this

1 is kind of a, you know, all-in-the-family type of situation
2 but obviously, Your Honor, this is no laughing matter. It's
3 not a TV show. It's real life and we think there will have to
4 be consequences to this action -- these actions.

5 I think -- this Court already concluded that the
6 transfer that you talked about was a fraudulent conveyance and
7 recommended cancellation of the discha -- and discharge of the
8 deed and that Mirvis's interest in the property be subject to
9 levy and the property should be levied upon by the U.S.
10 Marshal. That's already been decided. And Judge Townes
11 adopted your report and recommendation. So as far as whether
12 something should be levied on that's already been decided by
13 you and Judge Townes.

14 THE COURT: The question is when?

15 MR. NATBONY: The question is when and the question
16 I think also goes to the issue of the hardship, which I'd like
17 to get to.

18 MR. TSIRELMAN: Your Hon --

19 MR. NATBONY: So --

20 MR. TSIRELMAN: Your Honor, may I briefly address
21 before we get to the hardship because hardship is really a
22 small part of our position?

23 THE COURT: Okay. So why don't -- fine. We'll hold
24 that and I'll come back to you, Mr. Natbony.

25 MR. NATBONY: All right. I did --

1 THE COURT: Okay.

2 MR. TSIRELMAN: Thank you, Your Honor. Your Honor,
3 we --

4 THE COURT: Well, hold -- hold on a second.

5 MR. TSIRELMAN: Oh, there's more?

6 THE COURT: So before you go to hardship was there
7 anything else you wanted to say on the legal issue?

8 MR. NATBONY: Oh, yeah. I mean, I think that --
9 there are a couple of things I think that just remain
10 undisputed that I think the Court should just keep abreast of.
11 Property does have value. I think we've gone through that.
12 Clearly, Mirvis has an interest in the property. You've got
13 the prior order and judgment out there already. And I think
14 the other thing I'll leave for hardship and if Mr. Tsirelman
15 wants to speak I'll get to hardship. Is there anything else
16 that I had? Nope. That's it.

17 THE COURT: Okay. Great.

18 So, Mr. Tsirelman, what did you want to say?

19 MR. TSIRELMAN: Thank you, Your Honor. Excuse me.
20 Your Honor, we strongly disagree with Allstate's position on
21 the law. Specifically -- and this is a case -- before I get
22 to the case but in sum and substance, Your Honor, Allstate is
23 really arguing that they should be a creditor with greater
24 rights after the fraudulent conveyance than they have as the
25 creditor before the fraudulent conveyance. That position,

1 Your Honor, the Appellate Division has already addressed.
2 It's not a case that's cited in any of our papers but I found
3 it last night as I was preparing for this case and I will give
4 you a cite. It's MAR Midland Bank v. Murkoff, 120 A.D.2d App.
5 Div. (1986). And that Court has held and I quote that:

6 "Defrauded creditor is not entitled to an
7 enhancement of position beyond what it was before the
8 fraud."

9 It went on to say:

10 "The punishment is not a proper basis for granting
11 relief in the fraudulent conveyance action no matter how
12 scandalous the conduct."

13 Now, the cases that Allstate is relying on, you're
14 right, Your Honor, they're different on the facts. For one,
15 this was -- in the federal cases this was not a homestead
16 property; number two, the wife in those cases was involved in
17 the fraud itself; and number three, the property unlike this
18 case was transferred to a wife herself and here was
19 transferred to the daughter.

20 Moreover, at least one, if not both cases -- I think
21 one case was before the 1986 and the other case didn't cite to
22 this Midland Bank v. Murkoff. As far as I remember it did
23 not.

24 And the difference, Your Honor, and I want to point
25 this out -- this is very important -- that the Court has found

1 that Mark Mirvis' interest in the property be subject to the
2 levy. It never found that Lyubov Mirvis's interest should be
3 subject to the levy. And, in fact, Your Honor, I would submit
4 to you that the judgment debtor's wife cannot be and could not
5 have been deemed to have fraudulently conveyed her interest in
6 the property to her daughter. And why not? Well, simply
7 because the fraudulent intent that attaches to the judgment
8 debtor when he transfers the property to anyone could not have
9 been attached to his wife. His wife was not a defendant. His
10 wife did not have a judgment against her. Her right in the
11 property was unencumbered by any creditor, so her conveyance
12 could not have been deemed fraudulent.

13 Now, I was not an attorney in this case before and
14 the conveyance was -- in fact, was the entire conveyance was
15 deemed fraudulent and was reversed. And so Allstate, maybe
16 because they read our opposition or some other reason,
17 probably realized that they cannot succeed unless they somehow
18 implicate the debtor's wife in this transaction.

19 So in the reply -- now this is on page 13 -- it kind
20 of summarizes this entire thing. And this is what they say,
21 quote, "Plaintiffs submit that any tendency by the entirety
22 interest or right of survivorship of L. Mirvis" -- which is
23 debtor's wife -- "has or should be deemed to have
24 terminated" -- which is their argument -- "and based on her
25 participation in fraudulent transactions."

1 So they need her participation in fraudulent
2 transaction but, Your Honor, nowhere in the motion or the
3 reply they tell us what is that fraudulent participation.
4 It's not here. The Court did not make a finding as far as I
5 know that the wife had participated in the fraud. As argued
6 before she couldn't have.

7 And these cases are very different and the facts of
8 this, as I said before, is very different than the cases they
9 cited where the wife actually testified in open court and the
10 judge deemed her testimony incredible. In this case Miss --
11 the wife Mirvis did not testify. She did not submit to any
12 deposition. There's nothing here that the wife did and, as I
13 said before, her transaction was, I believe, fully legal. And
14 with that in mind, Your Honor, we believe that this motion
15 should be denied.

16 I want to also address very briefly before we get to
17 the hardship exactly what is this house worth and what can
18 they get out of this house. So even if we assume that this
19 house is worth 1.4 million dollars, this house is going to be
20 sold at an auction. And we all know that people buying houses
21 at an auction buy them at 10 to 20 percent below market value
22 price because if the situation was reversed, if people were
23 buying it at an auction above the market value price then,
24 Your Honor, I'd submit to you that every house would have been
25 sold in an auction. That's just not the case. People buy at

1 an auction and for a good reason. They can't get into the
2 house. They can't send an inspector into the house. They
3 don't know what's broken or what's fixed. So the houses
4 probably would sell ten, 20 percent below the market value.
5 And 20 percent of 1.4 is \$280,000. And if you subtract from
6 1.4 just this 20 percent and then you subtract the tax that
7 the buyer would have to pay the county, the transfer tax, and
8 the tax they would have to pay to the state. And the fees
9 that they would have to pay the sheriff or the Marshal for the
10 auction and other costs and add into that the \$785,000
11 mortgage and \$170,000 exemption, you have to ask yourself why
12 would Allstate knowing all this still file this motion?

13 And the answer, Your Honor, I submit to you is the
14 same reason why Allstate had issued subpoenas for Tatyana
15 Mirvis which they recently withdrew I understand, the same
16 reason they issued subpoenas to her husband, the same issue --
17 the same reason they issued subpoenas to this firm. The only
18 reason, Your Honor, is exactly what CPLR 5240 is designed and
19 grants the Court broad discretionary powers to control and
20 regulate the enforcement of money judgments to prevent
21 unreasonable annoyance, expense, embarrassment and
22 disadvantage.

23 Your Honor, for all those reasons, and I leave the
24 hardship for later, we ask the Court either to deny the motion
25 or as the courts have held give and allow the creditor

1 legitimate security interest which is protected by a lien and
2 the right of survivorship. If the wife prede -- predeceases
3 the judgment debtor, Allstate gets the house.

4 THE COURT: And if not?

5 MR. TSIRELMAN: And if not, they don't.

6 THE COURT: Okay. So how does the judgment get
7 paid?

8 MR. TSIRELMAN: It cannot get paid through selling
9 of the house and fee simple. There's simply -- in the State
10 of New York it's simply not an option. And under the facts of
11 this case it should not be granted.

12 THE COURT: Okay. So I was curious about your
13 statement that without Mrs. Mirvis's testimony that the Court
14 then finds incredible, she can't be found to have con --
15 participated in fraud.

16 MR. TSIRELMAN: Not --

17 THE COURT: I found that to be a somewhat curious --

18 MR. TSIRELMAN: Not -- Your Honor --

19 THE COURT: -- characterization.

20 MR. TSIRELMAN: That's --

21 THE COURT: No?

22 MR. TSIRELMAN: I apologize.

23 THE COURT: Then I was mistaken.

24 MR. TSIRELMAN: Yes. I apologize. I'll make it a
25 little more clear. What I meant to say is to distinguish the

1 facts of this case with the facts of the case they cited. I
2 believe the Clarkson case where the wife did testify and the
3 Court found that, just to make the distinction.

4 THE COURT: Okay. And so are you saying that -- I
5 guess I'm just trying to extrapolate to this case to see what
6 the circumstances might be where there -- a Court could find
7 fraud. Would you agree that the Court could -- theoretically
8 maybe not on the facts of the case but that the Court could
9 infer fraud without testimony?

10 MR. TSIRELMAN: Your Honor, certainly the Court can
11 infer fraud without testimony but as -- I mean, that would be
12 a very interesting inference and depending on the facts of the
13 case. But as the Appellate Division had said and the case I
14 quoted, they still would not -- the creditor would still not
15 give greater rights they had before the conveyance than they
16 do have now.

17 THE COURT: All right. So the fact that Mrs. Mirvis
18 and Mr. Mirvis made the decision together, right -- because
19 I'm just trying to figure out since we don't have testimony
20 what the facts are in this case, they make a decision together
21 to convey this house to their daughter for \$10. So that isn't
22 something that the Court could infer was fraudulent --

23 MR. TSIRELMAN: Correct.

24 THE COURT: -- by Mrs. Mirvis?

25 MR. TSIRELMAN: Correct, Your Honor. And let me

1 explain to you why. So we would be speculating if we would
2 assume that each one decided to gift each other's half to the
3 daughter. So what could have happened is Ms. Mirvis could
4 have gran -- or gifted only her half to the daughter. That
5 would not be fraudulent. And Mr. Mirvis decided to grant his
6 half to the daughter. That would be a fraudulent conveyance.
7 But because Ms. Mirvis was not under any judgment and she was
8 not a defendant, she had every right to gift her half to her
9 daughter, and that's the distinction I'm trying to make.

10 THE COURT: Right. I understand that. But in real
11 life when people make those decisions they're only going to do
12 that with knowledge that they're doing something that's not
13 normal for a purpose, right? I mean, it wasn't a birthday
14 present. There's no testimony that it was.

15 MR. TSIRELMAN: Well, could -- there's no testimony
16 that -- of any sort.

17 THE COURT: Right.

18 MR. TSIRELMAN: There's no testimony that it wasn't.

19 THE COURT: But that's what I mean. That's what I'm
20 saying about --

21 MR. TSIRELMAN: Correct.

22 THE COURT: -- in real life the Court can't be blind
23 to what normally happens and what doesn't happen and if
24 there's a good explanation for it, sure. But when there's no
25 good explanation for something that looks strange and unusual

1 the Court could infer certain things from it. And in your
2 scenario it's not likely that a husband with a multi-million
3 judgment against him doesn't sit down with his wife or -- and
4 have a conversation about what they're doing about their
5 house. Likewise, there's no information that the wife has no
6 idea what is going on and innocently tried to gift this house
7 as a birthday present to their daughter, right, with this kind
8 of strange \$10 thing because it wasn't really even a gift.

9 So I'm just saying that the circumstances are just
10 highly suspicious and in the absence of information that puts
11 a factfinder's mind to rest to say, "Ah, okay. I see. That
12 explains everything." In the absence of that I think it seems
13 fair for the fact finder to say, "You know what, the only
14 explanation I can come up with is that they're trying to --
15 they're up to no good," right? "They're trying to hide money.
16 They're trying to do something that's technically okay in the
17 scenario that you posited it, that she's gifting her half and
18 then he's doing something else." It may be technically okay
19 but it in the context is not okay.

20 So that's the gray area that I think you're trying
21 to lead me through and I just have a lot of questions about
22 that.

23 MR. TSIRELMAN: Yes, Your Honor. And what I think
24 to make my point clearer is this. When the judgment transfers
25 something like that, the law imposes on that transfer a

1 fraudulent intent. What I'm saying is that when the wife
2 transferred it, the law cannot impose of that a fraudulent
3 intent. She could have if she wanted to. Whether there was a
4 judgment against her husband or what -- no judgment against
5 her husband, whether she wanted to do it to protect her
6 part -- her half of the house, she could have well have done
7 that and that would not have been considered a fraudulent
8 intent.

9 So I will take your scenario and I'll run with it.
10 Suppose, as in this case, the judgment that is half is subject
11 to the creditors and her half is not and she could have -- and
12 I believe there was some testify that they went to an attorney
13 who suggested something and the attorney could have said, you
14 know what, at least your half you can protect. You can
15 transfer to your daughter.

16 THE COURT: "You" meaning --

17 MR. TSIRELMAN: The wife.

18 THE COURT: Well, why does she have to protect it at
19 that point? Under your scenario it's already protected.

20 MR. NATBONY: Right.

21 MR. TSIRELMAN: She doesn't have to, but if she
22 wanted to give it to her for -- to the daughter for other
23 purposes, she could have. That's all I'm saying.

24 THE COURT: Right. Yeah. But then it -- but the
25 other purposes hasn't been explained to me.

1 MR. NATBONY: There was an explanation in the record
2 but not by her.

3 THE COURT: Okay. So there's no --

4 MR. TSIRELMAN: Not by her.

5 THE COURT: From my perspective there's no
6 explana --

7 MR. NATBONY: No. There isn't.

8 THE COURT: Hold -- hold on.

9 MR. NATBONY: I'm sorry.

10 THE COURT: There's no explanation for it.

11 MR. TSIRELMAN: Not by her. Correct, Your Honor.

12 THE COURT: And she would have been protected had
13 she done nothing because the house is half hers. But instead,
14 she did something that looks like she's trying to hide it.
15 And so once you do that it -- with her husband because it
16 wasn't just her half being transferred; it was his half as
17 well.

18 MR. TSIRELMAN: Correct.

19 THE COURT: The whole house is being transferred.

20 MR. TSIRELMAN: Correct.

21 THE COURT: So in that scenario it starts to look
22 like they're hiding the money. So that's the problem, right?
23 If they're just -- if people are just --

24 MR. TSIRELMAN: Correct.

25 THE COURT: -- walking out of the bank carrying

1 their pocketbook and wallet that looks fine. But if they're
2 starting to throw money in the gutter, you know, then it looks
3 like they stole it.

4 MR. TSIRELMAN: Correct.

5 THE COURT: And unless there's a good explanation
6 for it then that's still what it looks like. So that's
7 what --

8 There -- there's a gentleman in the courtroom. Does
9 anybody recognize him?

10 MR. TSIRELMAN: Yeah. That's the judgment debtor,
11 Your Honor.

12 THE COURT: Is it --

13 MR. MIRVIS: Can I come to --

14 THE COURT: -- Mark Mirvis?

15 MR. MIRVIS: For a second? I'm sorry.

16 MR. TSIRELMAN: Yeah. That's Mark Mirvis, Your
17 Honor.

18 THE COURT: Do you want to talk to your client -- to
19 your lawyer?

20 I think he wants to talk to you.

21 MR. TSIRELMAN: May I, Your Honor?

22 THE COURT: Yeah. Take a break. Go talk to him.

23 UNIDENTIFIED VOICE: He's *pro se*.

24 MR. NATBONY: Wait, who is it?

25 UNIDENTIFIED VOICE: It's Mark Mirvis. He's *pro se*.

1 He's not his lawyer.

2 MR. NATBONY: But that's not his lawyer, Your Honor.

3 He's --

4 THE COURT: No?

5 MR. NATBONY: -- appearing here *pro se*.

6 THE COURT: Oh, wait. Hold on.

7 MR. MIRVIS: My lawyer, Your Honor. I had this
8 lawyer.

9 MR. NATBONY: Not here. Not in this case, Your
10 Honor.

11 THE COURT: All right. Hold on. So --

12 UNIDENTIFIED VOICE: What --

13 THE COURT: Hold. Wait. Hold.

14 MR. NATBONY: He's not representing Mr. Mirvis in
15 this case.

16 MR. TSIRELMAN: I represent his wife and the
17 daughter now.

18 THE COURT: Okay. So I will give you a few moments
19 to talk. Please come back.

20 MR. TSIRELMAN: Okay.

21 THE COURT: This is the first time I've seen
22 Mr. Mirvis I think.

23 [Pause in the proceedings.]

24 MR. TSIRELMAN: Thank you.

25 THE COURT: All right. So, Mr. Tsirelman, is there

1 anything else you want to say at this point?

2 MR. TSIRELMAN: Your Honor, the -- Mr. Mirvis has
3 informed me that this would -- there was an explanation. It's
4 in the record. I'm not going to go through it, but it had
5 something to do with the daughter paying all the mortgage at
6 the time --

7 THE COURT: Yeah. I remember that.

8 MR. TSIRELMAN: -- and everything. And so --

9 THE COURT: Yeah. I remember that.

10 MR. TSIRELMAN: Right. So I'm not going to go
11 through them.

12 THE COURT: Yeah. I remember that being given and I
13 remember rejecting that.

14 MR. TSIRELMAN: Right. Right.

15 THE COURT: Yes. Okay. So that -- that's it?

16 MR. TSIRELMAN: Yes.

17 THE COURT: Okay.

18 MR. NATBONY: May I respond?

19 THE COURT: Go ahead, Mr. Natbony.

20 MR. NATBONY: Thank you, Your Honor. So just a
21 few -- just a few points in particular in response and then
22 I'll touch on hardship, if I may. So there actually is some
23 evidence in the record that I just want to point to Your Honor
24 to. And that's in document 459-1 at paragraph 11. You know,
25 we refer to the fact that Tatyana Mirvis has said that both of

1 her parents, that means Mark and Lyubov, convinced her to deal
2 with this fraudulent conveyance and accept the conveyance. So
3 both not only talked to Tatyana about this and convinced her
4 to participate, but Your Honor has already found that the
5 fraudulent conveyance in which Mr. Mirvis' wife did
6 participate was a fraudulent conveyance. And I don't know of
7 any other explanations, you know, in the record.

8 THE COURT: So, I'm sorry. You -- the -- you said
9 it was document 459-1?

10 MR. NATBONY: Dash 1 --

11 THE COURT: Paragraph 11. And that --

12 MR. NATBONY: Paragraph 11, I believe.

13 THE COURT: And that is the daughter's affidavit?

14 MR. NATBONY: I believe that's correct, Your Honor.

15 THE COURT: Okay. All right. I'll double-check it.
16 If I'm not right I'll -- but that's -- that is that testimony.

17 THE COURT: Okay.

18 MR. NATBONY: I -- you know, as far as this other
19 case that, you know, Mr. Tsirelman says, "I have not seen that
20 case." I know that it predates at least the second case that
21 I've mentioned to you, Your Honor, which is the Hallmark case.
22 I am happy to address it after the argument if you want, but
23 the bottom line is it -- you know, I -- we believe that it's
24 on all fours.

25 So there was a pattern here. The other thing to

1 point out to Your Honor is the timing of these conveyances
2 which, you know, should not be left aside. I mean, if there
3 was some reason to determine [ph.], why was it done within
4 days of -- you know, of certain key dates relating to the
5 default judgment here? And by the way, Your Honor, the 459-1
6 was Tatyana Mirvis's affidavit.

7 THE COURT: Okay.

8 MR. NATBONY: Okay. And it's paragraph 11. She
9 says, "My parents told me it was the proper way to proceed."
10 So "my parents" in plural.

11 As far as the auction price argument that
12 Mr. Tsirelman made, I mean, it's just entirely speculative. I
13 don't know what the house will go for. We know what the value
14 is. Even if you take Mr. Tsirelman's numbers at face value
15 there's still going to be hundreds of thousands of dollars,
16 you know, that can be exercised for a 45-million-dollar
17 judgment. You know, and I sit here and I listen to, you know,
18 Mr. Tsirelman talk about, you know, bother and expense and
19 unreasonable conduct.

20 You know, in all fairness, Your Honor, if there's
21 been any unreasonable conduct here, you know, it's been by
22 Mr. Mirvis and his family. Allstate has a 45 million-dollar
23 judgment. It's seen pittance on that judgment and he just
24 continues and continues to try and evade paying any portion of
25 this judgment.

1 THE COURT: He's been held in contempt.

2 MR. NATBONY: Yes, Your Honor, he has. You know,
3 and -- you know, and let's -- so I think -- I'd like to turn
4 to hardship now unless, you know, Your Honor has further
5 questions and I think first let's -- I guess I'd like to deal
6 with the child first, if I may.

7 So there is a past history here of involving family
8 members in evasion schemes and I think now we've gotten to a
9 new low. And, you know, now they're using their grandson as a
10 pawn to assert hardship. And essentially what they're asking
11 the Court to do is exercise its discretion under 5240 and help
12 them continue to evade the consequences of their action. The
13 Court -- a Court should reject that effort.

14 So let's look at what they argue. Well, first I
15 think it's important to know that the sale of the home does
16 not necessarily mean that the child or the family has to move
17 or that the child has to change schools. It's the sale of a
18 house. If you talk about that house, a sale could lead to
19 several options. The family could rent it from new owners.
20 They could cohabitate. They could purchase it from the new
21 owner or they could move to another home that is in the same
22 area where the same school could be located or another house
23 in the area.

24 And even if they do move there's no proof that
25 alternate housing or schooling is not available to rent or buy

1 near -- rent or buy nearby or other schooling. Yeah, I
2 appreciate the tendency to put in words to catch people's
3 attention. This family is not going to be on the street and
4 the child is not going to be on the street.

5 You know, the -- I will say that in some pleadings
6 the -- that Mirvis's wife put into the court she said, "Look,
7 if need be I'm going to provide the Court with a detailed
8 affidavit from a healthcare professional that shows the
9 special needs of this child and why the move would have a
10 substantial impact." Well, where is that, Your Honor?

11 THE COURT: Well, there was something filed, not
12 just the --

13 MR. NATBONY: Well, I'm going to address that right
14 now.

15 THE COURT: Yeah. Okay.

16 MR. NATBONY: There's --

17 THE COURT: But did you see that or that's under --

18 MR. NATBONY: I did, yes.

19 THE COURT: Oh, okay.

20 MR. NATBONY: We did see it. It was provided to us
21 I think late Friday.

22 THE COURT: Okay.

23 MR. NATBONY: So they put in a letter from
24 Dr. Blinderman and I will tell you, Your Honor, that that
25 letter is totally worthless and here's why. First of all,

1 there's no list of qualifications of this doctor, no
2 background, no CV, no indication of any expertise whatsoever
3 in child development. In fact, I went on and I did a web
4 search for him. He's a general pediatrician. That's what he
5 is. There's no indication of any psychological developmental
6 disability background. It's a one-paragraph letter oddly
7 formatted, unsworn, not notarized, not under oath. Doctor is
8 not here today. It's not authenticated in any way. Frankly,
9 it should be ignored.

10 But even if Your Honor chose to look at it there is
11 no identification anywhere in that one-paragraph letter of
12 what these special needs and disabilities are. It just says
13 there are certain unidentified needs and he needs care not
14 found in every school. He doesn't say that the care is not
15 available elsewhere. He doesn't say that the care isn't even
16 available through the Hewlett School District which, by the
17 way, you know, looking online has a very significant special
18 education program for speech therapy, occupational therapy and
19 physical therapy. You know, the affidavit of -- not in the
20 affidavit -- it's the one-paragraph, non-sworn statement --
21 also assumes a move from the neighborhood, which is not a
22 given. It baldly says, "Taking the child out of current home
23 will negatively affect his progress and development." How?
24 What's the basis for this statement? There is nothing in this
25 one-page letter. Frankly, Your Honor, if this was an expert

1 report it would be the classic case for application of
2 Daubert.

3 Then they also submitted to us on Friday a bunch of
4 school reports. And again, we believe that these are equally
5 not providing a basis for application of this hardship. No
6 one is disputing here, Your Honor, that this child has some
7 special needs but the question is, how is execution on the
8 house going to truly impact the needs and development of this
9 child? And these school reports say nothing about that.
10 Again, they are unauthenticated. They are pure hearsay. They
11 should not be admitted. But again, even if Your Honor wants
12 to look at them there's no mention in any one of those reports
13 about the importance of any peer relationship at that school,
14 of friends or teachers. There is no mention in any of those
15 reports of the impact or any impact of a change environment or
16 a change of school or a change in residence, just not there at
17 all. All these reports do show is that the child is getting
18 physical therapy, occupational therapy and speech therapy.
19 And frankly, those services are provided by the Hewlett School
20 District. They have a special education plan in place that
21 offers those services.

22 So with respect to this hardship or this alleged
23 hardship, we understand this is a difficult situation but it's
24 not one where they have the burden of coming to Your Honor and
25 demonstrating and proving why Your Honor should exercise what

1 is a discretionary issue for Your Honor to basically take away
2 Allstate's right to execute on property when they just haven't
3 proved the impact that none of the submissions that they made
4 talk about it with any specificity. You know, and to the
5 extent that they relied all on hardship for the family I'll
6 remind Your Honor that the family is currently paying mortgage
7 payments in excess of \$4200 a month. That doesn't include
8 property taxes. When you put it all together they're
9 currently paying \$7,000 a month -- over \$7,000 a month.
10 Mr. Mirvis has admitted to an additional income of \$2,000 a
11 month. His son-in-law who lives there as we put into evidence
12 is a high-end real estate broker with over 500 million dollars
13 of sales in the last few years. And according to the website
14 that we put in to Your Honor he is top-producing. The family
15 takes vacations and the Court has already denied an
16 application by Mr. Mirvis for imporporous [ph.] relief in an
17 application based on a lot of this evidence.

18 You know, in all sincerity, Your Honor, the level of
19 arguments that come from the Mirvis family, you know, are
20 generally unsupported. They like to throw things -- many
21 things out there in the hopes that something will stick and I
22 think Your Honor has seen many of these arguments, you know,
23 for what they are worth.

24 But to the extent that the Mirvis family is
25 concerned about the child, might I suggest that Mr. Mirvis

1 instead of opposing this application somehow maybe you should
2 pay the \$10,000 in attorney's fees that Your Honor ordered and
3 avoid the possibility of incarceration and being away from
4 this grandson.

5 THE COURT: So what information do you have about
6 Mr. Mirvis's ability to live if this house were taken from
7 him?

8 MR. NATBONY: Well, again, I'm looking at the family
9 as a whole because the family is living there as a group, you
10 know. And as I --

11 THE COURT: But I'm try -- I'm asking you what
12 insight you have into his financial situation.

13 MR. NATBONY: Right. So I think what I've said is
14 he -- we know that he has at least income of \$2,000 a month.
15 His wife has a full-time job.

16 THE COURT: Has he answered your request for
17 information about his financial status?

18 MR. NATBONY: Yes.

19 THE COURT: Yes.

20 MR. NATBONY: He did.

21 THE COURT: Okay.

22 MR. NATBONY: So his wife has a full-time job. He
23 has a -- has some income for month. But again, on this house,
24 you know, he's managing to pay over \$8,000 a month, you know,
25 when -- over \$7,000 a month when you combine the mortgage and

1 the property taxes. So, you know, how is he going to live?
2 Well, if he's managing to do that and pay \$7,000 a month, you
3 know, I think he can find another place to live. And frankly,
4 if the desire is for the son and the daughter-in-law and the
5 child to be with them, there's nothing stopping them from
6 being able to do this. And, you know, Mr. Tsirelman says,
7 "Oh, there are cases out there and exercising of discretion."
8 Yeah, but if you look at those cases, Your Honor, you know,
9 they're either cases where real hardship has been proven --
10 okay, that's their burden.

11 Okay. They brought in not a single witness today.
12 You know, they could have brought the doctor. They could have
13 brought other witnesses. They chose not to. The record is
14 the record and that's their burden on hardship. And -- you
15 know, and in that case I think the answer is they haven't met
16 their burden. There's enough in this record to show that they
17 can live and they can live just fine.

18 Anything else?

19 THE COURT: And under the homestead exemption they'd
20 get \$170,000 from the sale, is that right?

21 THE COURT: That's correct, Your Honor. I -- we're
22 not disputing that. I mean, this is -- you know, we're not
23 looking for more than we're entitled to under the law. But
24 the bottom line is when you have a wife that has, as this
25 Court has found, participated in a fraudulent conveyance, and

1 those are the words that the Court used in the Hallmark case,
2 participated in a fraudulent conveyance. And when you've got
3 a pattern, you've got the timing, you've got all of these,
4 they have not come forth to dispute any of this.

5 In the cases where there has been discretion awarded
6 there's either been an absolute finding of severe hardship
7 which they have not done or there have been other instances.
8 For instance, in one case that they cite the Court exercised
9 its discretion not to ex -- execute on the home when they made
10 a commitment to pay thousands of dollars a month to the
11 judgment. That hasn't happened here. So, you know, there are
12 no other factors that would tend to allow this Court to
13 exercise its discretion. What the Court should do is hold
14 this family, hold Mr. Mirvis to the consequences of their
15 actions.

16 THE COURT: Let me just stop you there for a moment
17 and a procedural question.

18 MR. NATBONY: Yes, Your Honor.

19 THE COURT: Is Mr. Mirvis a party to this motion
20 such that he should be permitted to participate *pro se*?

21 MR. NATBONY: Yes.

22 THE COURT: Okay. So should -- since he's here
23 perhaps I should invite him to say what he wants to say,
24 right? Since he's *pro se* and you don't represent him and
25 Mr. Mirvis is here, I don't want him to be excluded because

1 this --

2 MR. MIRVIS: [Indiscernible]

3 THE COURT: Yeah. Why don't you come up?

4 MR. TSIRELMAN: Your Honor, and may I just address
5 some of the things he said before Mr. Mirvis --

6 THE COURT: Yeah. Go ahead.

7 MR. TSIRELMAN: Thank you, Your Honor. I'm going to
8 start from --

9 MR. NATBONY: Ah --

10 THE COURT: Yes.

11 MR. NATBONY: Just before we go on, Your Honor --

12 THE COURT: What?

13 MR. NATBONY: I -- I have no problem with Mr. Mirvis
14 participating.

15 THE COURT: Yes.

16 MR. NATBONY: But I presume I'll have a right to
17 cross-examine if I want to?

18 THE COURT: Well, if he hasn't testified he
19 hasn't --

20 MR. NATBONY: Well, if he -- if he's coming on to
21 the record --

22 THE COURT: Well, if he hasn't -- I -- he will
23 participate as --

24 MR. NATBONY: As a *pro se* lawyer?

25 THE COURT: As a *pro se* litigant.

1 MR. NATBONY: Let -- let's --

2 THE COURT: If he's not testifying under oath --

3 MR. NATBONY: Okay. I'll --

4 THE COURT: -- he is not subject to --

5 MR. NATBONY: I'll address that if it need be later.

6 THE COURT: -- cross-examination.

7 MR. NATBONY: Okay.

8 THE COURT: If you want to call him as a witness
9 he's here.

10 MR. NATBONY: Okay.

11 THE COURT: So -- but I don't think just because --

12 MR. NATBONY: I'll address this later if I need to.

13 THE COURT: Right. I think that the fact that a
14 person is in court doesn't mean he's testifying.

15 MR. NATBONY: I agree, Your Honor.

16 THE COURT: Okay. So he can participate I think --
17 I didn't expect him to be here, but he's here and so I feel a
18 little bit strange not allowing him to participate if he wants
19 to.

20 MR. NATBONY: No objection, Your Honor.

21 THE COURT: Right. And so that's why I've --

22 MR. NATBONY: No objection.

23 THE COURT: -- invited him to be here. If he wants
24 to testify it needs to be under oath and then he would be
25 subject to cross-examination. If he doesn't testify and it's

1 therefore not under oath the Court will take that as whatever
2 it is.

3 MR. NATBONY: Thank you.

4 THE COURT: It's not testimony. Right. Okay.

5 So, Mr. Tsirelman, go ahead.

6 MR. TSIRELMAN: Thank you, Your Honor. Just start
7 from the -- from the end that opposing counsel has spoken
8 about the case where they've agreed to base some of the
9 judgment -- the distinguishing factor in that case was that
10 the judgment debtor did not live in the house. The judgment
11 debtor was renting that house out so they were making an
12 income of -- on that house and so the Court said that if you
13 continue to pay --

14 THE COURT: That's the Clarkson case?

15 MR. TSIRELMAN: I think so.

16 THE COURT: Yeah. Okay. But --

17 MR. TSIRELMAN: So that's the distinguishing factor
18 as far as --

19 THE COURT: But Mr. Natbony pointed out that the
20 Hallmark Electronics case was the primary residence.

21 MR. TSIRELMAN: I believe so, yes.

22 THE COURT: Yeah. Okay.

23 MR. TSIRELMAN: But -- right. But where -- in a
24 case where they asked him to pay they didn't live there
25 themselves. There were tenants there and that's why --

1 THE COURT: Yes.

2 MR. TSIRELMAN: -- the Court -- so that's the
3 distinction.

4 THE COURT: I understand that goes to hardship.

5 MR. TSIRELMAN: Right.

6 THE COURT: That it's different when it's an
7 investment property.

8 MR. TSIRELMAN: Right. As far as he made a lot of
9 comments about the doctor not signing this and not notarizing
10 this. Pursuant to CPLR, at least a doctor's statement does
11 not have to be notarized. It's enough to be affirmed and --

12 THE COURT: Can you hold on a second? Sorry.

13 [Pause in the proceedings.]

14 Sorry. Go ahead.

15 MR. TSIRELMAN: Yes. Thank you, Your Honor. And
16 there's a lot of speculation about the son-in-law selling,
17 I've heard for the first time, half a billion dollars right
18 now. There's -- you know, in all the times that they've
19 complained about us not meeting our burden and showing the
20 proof they've just been making speculation after speculation,
21 statement after statement and there's no proof whatsoever
22 that --

23 THE COURT: I think there was something submitted in
24 the record.

25 MR. NATBONY: It was, Your Honor.

1 THE COURT: Yeah. I see that here.

2 MR. TSIRELMAN: Right. But, no --

3 THE COURT: It's document 650-4?

4 MR. TSIRELMAN: Yes.

5 THE COURT: Okay.

6 MR. TSIRELMAN: I saw the document but there's no
7 in -- that document doesn't show what his portion of all these
8 sales is.

9 THE COURT: But it --

10 MR. TSIRELMAN: He didn't --

11 THE COURT: It's not an exact number but it's
12 listing very high end --

13 MR. TSIRELMAN: That's the sales.

14 THE COURT: -- properties.

15 MR. TSIRELMAN: Right. Yeah, but those are the
16 sales, but what is his portion from these entire sales?

17 THE COURT: Well, I --

18 MR. TSIRELMAN: Did he make a dollar or did he make
19 a million or ten billion?

20 THE COURT: Do you think he made a dollar?

21 MR. TSIRELMAN: No. We just -- no, he made more
22 than a dollar.

23 THE COURT: Okay. So --

24 MR. TSIRELMAN: But there's no -- what I'm saying is
25 there's nothing in the record to suggest how much did he

1 actually make from all these sales.

2 THE COURT: Well, usually Realtors get six percent.

3 MR. TSIRELMAN: Usually they do unless there's a co-
4 Realtor on --

5 THE COURT: Then they get three percent.

6 MR. TSIRELMAN: Correct. Unless they are a small
7 person down the totem pole who makes -- who's an assistant.

8 THE COURT: One -- well, he's not listed as an
9 assistant.

10 MR. TSIRELMAN: He may not be listed as an
11 assistant.

12 THE COURT: He's a co-founder and partner and it
13 says one of his top pro -- one of the -- on of New York City's
14 top-producing Realtors.

15 MR. TSIRELMAN: He just started to be a partner like
16 maybe more than a year ago.

17 THE COURT: Oh, well --

18 MR. TSIRELMAN: He used to be -- he used to be
19 [indiscernible] worker.

20 THE COURT: Okay. So, Mr. Mirvis, if you want to --

21 MR. TSIRELMAN: I'm sorry.

22 THE COURT: -- put facts on the record you need
23 to --

24 MR. TSIRELMAN: One sec.

25 THE COURT: -- be under oath.

1 MR. TSIRELMAN: Ah.

2 THE COURT: Okay. So I'm looking at what's in the
3 record and this is from the --

4 MR. TSIRELMAN: Okay.

5 THE COURT: -- Douglas Elliman site. I don't know
6 if it's true or not, but it is an official site.

7 MR. TSIRELMAN: Okay. I'm sorry.

8 THE COURT: And it says that he is one of New York
9 City's top-producing Realtors after spending over half a
10 decade with them. It doesn't say when he became a partner but
11 at the moment when this was printed, which was August of 2019,
12 it says he was co-founder -- team co-founder and partner. And
13 so I wouldn't think he's an assistant. He may not make a full
14 six percent, but certainly one percent of 45 million dollars,
15 you know, is quite high.

16 MR. TSIRELMAN: I agree.

17 THE COURT: And then there's a whole list of
18 properties. So I'm -- you're right. We cannot say with
19 certainty what the exact dollar amount is, but I would think
20 that it's likely to get him into the top one percent possibly.

21 MR. TSIRELMAN: I'm not sure.

22 THE COURT: It's just an inference. Again, in the
23 absence of actual numbers.

24 MR. TSIRELMAN: Correct.

25 THE COURT: The Court is allowed to make inferences.

1 MR. TSIRELMAN: Correct. And that's -- my point is
2 that they didn't bring any numbers in.

3 THE COURT: Yeah. Okay.

4 MR. TSIRELMAN: As far as living and paying for the
5 house, my understanding is that the wife had a pension plan
6 and she is cashing in that pension plan in order to pay some
7 of the expenses. And my other understanding is --

8 THE COURT: Is that in the record?

9 MR. NATBONY: No, Your Honor.

10 MR. TSIRELMAN: I'm not sure because I was not the
11 attorney before.

12 THE COURT: Okay. But once you became the
13 attorney --

14 MR. TSIRELMAN: I don't know if it's in the record,
15 Your Honor.

16 THE COURT: It's not?

17 MR. NATBONY: It's not in the record.

18 MR. TSIRELMAN: No.

19 THE COURT: Okay.

20 MR. TSIRELMAN: And I don't know if this is in the
21 record or not, but my understanding is they already defaulted
22 on one of the mortgages. Is that in the record?

23 MR. NATBONY: No.

24 MR. TSIRELMAN: Okay.

25 THE COURT: I have not seen that either.

1 MR. TSIRELMAN: Okay. Nothing else, Your Honor.

2 THE COURT: Okay. All right.

3 MR. NATBONY: The only response I would have,
4 Your -- Your Honor covered the son-in-law's issue but the
5 doctor's statement that he submitted was also not affirmed.
6 So it's not even affirmed.

7 THE COURT: Right. Okay. So -- and I note that the
8 child was born after the judgment was entered. So it's not --
9 I mean, the time that people have been living in this house
10 is -- it's a few years but it's not a long time.

11 Can you -- I don't know if this is in the record so
12 I'll just ask. How long did Mr. and Mrs. Mirvis live in the
13 house?

14 MR. TSIRELMAN: Since 1999, I believe. '99 or '98.

15 THE COURT: Okay.

16 MR. NATBONY: I think that's right, Your Honor.

17 THE COURT: Okay.

18 All right. Mr. Mirvis, I've -- since you're here
19 I've invited you to sit at counsel table because you are a
20 party in this case. You are not represented by counsel and so
21 I'll let you say what you want to say but if you're adding
22 facts that are not in the record they will not be considered
23 part of the record unless you testify to them under oath. If
24 you do testify under oath you will also be subject to cross-
25 examination. But if you want to say anything in terms of the

1 legal issues or anything else I'll --

2 MR. MIRVIS: I don't want to testify on the record
3 but I can say couple things to say about my grandson. I don't
4 know if it's -- if not --

5 THE COURT: Yeah. Well, I mean, at the moment we --
6 I have what has been submitted. We've been careful to protect
7 your grandson's privacy by not using names and things like
8 that.

9 MR. MIRVIS: Okay.

10 THE COURT: If you want to say something about him
11 I'll give you space to say it. We've been given a piece of
12 paper and I don't know since that's not your --

13 MR. MIRVIS: This is the doctor -- so this is the
14 doctor for --

15 UNIDENTIFIED VOICE: Your Honor, this was admitted
16 Friday under seal. It is just so that he can see --

17 THE COURT: What was submitted.

18 UNIDENTIFIED VOICE: -- what was submitted.

19 THE COURT: Okay.

20 MR. MIRVIS: Yeah. I just want to say -- I want to
21 say about my grandson. I mean, he's four years -- yesterday
22 he got four years and eight months. He didn't say a word.
23 He, if you called -- his name is S. If you called his name,
24 let's say his parents call him S. he make no reaction. Or to
25 think he's norm -- this is normal. I mean, 100 percent it's

1 not normal. He's -- at night he's not sleep -- I mean, he's a
2 sick kid and why doctor not testify by law -- I mean, legally,
3 I mean, they're not notarized because he said, "I not notarize
4 any papers. I'm busy." He got very busy practice. This is
5 the doctor who from day one he's doctor for S. And this is a
6 ba -- our -- I mean, for me main thing can -- in this li -- in
7 this life right now this is the -- this baby. Nobody else.

8 And same thing for all our members of our family.
9 And this is what has [indiscernible] us a lot and this is --
10 my daughter got only one baby so far and she's 35 years old.
11 And, I mean, she's very depressed and they are -- I'm sure you
12 can understand that. And this is what I want to say.

13 THE COURT: Okay. Thank you. And certainly I
14 appreciate that that is dis -- distressing for a family. The
15 issue is what happens when the house is sold and --

16 MR. MIRVIS: This is probably because the household
17 because he's always in the house. I mean, only he going to
18 the special school five days a week, Monday through Friday,
19 until 2 o'clock; 2:20 it's finished his school day. And only
20 lately, last couple month, he was going a little bit more
21 happy because he was crying all the time. I mean, it's a real
22 part of our life. I mean, it's -- this is what we deal right
23 now. And the rest of the things for us it's important, of
24 course, but this is most important to us in our life.

25 THE COURT: Okay. Thank you. Anything else?

1 MR. MIRVIS: No.

2 THE COURT: Okay.

3 MR. NATBONY: Nothing else, Your Honor.

4 THE COURT: Anything from either of the parties?

5 MR. TSIRELMAN: No, Your Honor. Thank you.

6 MR. NATBONY: No, Your Honor.

7 THE COURT: All right. So I take it that the
8 request is kind of an all or nothing. It's the sale of the
9 whole house. You're not asking for half the house to be sold.
10 I don't know if -- I don't know how that would be practicable
11 so I'm just asking the question in case you have a thought.

12 MR. NATBONY: Well, I -- I think that's right, Your
13 Honor. I think -- the only question that I think
14 Mr. Tsirelman really is -- exists is who ends up getting part
15 of the proceeds, right? I mean, you know, I -- I mean, our
16 position is we're entitled to all of the proceeds except for
17 the homestead exemption, you know, of the 175. But I -- I'm
18 not sure how you can sell half a house. I agree with you.

19 THE COURT: Yeah. That's why I was wondering. So
20 if the Court agrees with you and says Mrs. Mirvis forfeits her
21 half of the house because she engaged in a fraudulent
22 conveyance then the house gets -- the whole house gets sold.
23 The family may or may not get evicted depending on the new
24 owner and you get the proceeds after a subtraction of all of
25 those other things, the mortgage and the homestead exemption.

1 MR. NATBONY: Yes, Your Honor.

2 THE COURT: And if the Court rules the other way and
3 says Mrs. Mirvis didn't do anything wrong, she gets to keep
4 her portion of it. Then the house can't get sold because you
5 can't sell half a house.

6 MR. NATBONY: Well, I --

7 THE COURT: And so you'd have to wait for the levy
8 and the lien --

9 MR. NATBONY: No. I would --

10 THE COURT: No?

11 MR. NATBONY: I would suggest, Your Honor, that the
12 house can get sold.

13 THE COURT: Okay.

14 MR. NATBONY: And if there is -- I mean, again we
15 would not agree that that result should occur.

16 THE COURT: I agree.

17 MR. NATBONY: But if that's -- if Your Honor --

18 THE COURT: I'm just trying to think through --

19 MR. NATBONY: -- goes that way --

20 THE COURT: Yeah.

21 MR. NATBONY: -- practically, I would think that the
22 whole house could still be sold. Allstate would get whatever
23 share it's get -- it gets and Mrs. Mirvis would get her share
24 of the proceeds.

25 THE COURT: How would that work? Well, I'm just --

1 the practicality of it has my head spinning. That's why I
2 was -- I -- you know, when I originally read the papers that's
3 what I thought you were asking for. Then I stopped in my
4 tracks --

5 MR. NATBONY: Yeah.

6 THE COURT: -- and I thought, wait, hold on. How
7 does that work? And then I --

8 MR. NATBONY: Well, see, I think -- I think this is
9 the whole point of why Clarkson and Hallmark say that, you
10 know, this is why you have to terminate the tenancy by the
11 entirety because otherwise, I mean, I guess if Your Honor goes
12 that route and doesn't terminate it and, you know, Mr. Mirvis,
13 not wishing that on anyone, but if Mirvis were to pass before
14 his wife then essentially Allstate is out of luck and the
15 fraudulent scheme that was attempted to be put into place
16 essentially succeeds, you know, through other means. So --

17 THE COURT: Well, it's not through other means.
18 What happens then is it is as if --

19 MR. NATBONY: Right. But it's --

20 THE COURT: -- they never tried the fraudulent
21 conveyance.

22 MR. NATBONY: That's right. That's right. But, I
23 mean, the --

24 THE COURT: Right. So they are not really better
25 off for having tried it. Do you see what I'm saying?

1 MR. NATBONY: I --

2 THE COURT: If they had -- because if they hadn't
3 tried to convey this to their daughter in the first instance
4 we wouldn't be having this discussion today because the law
5 would say that Mrs. Mirvis gets to keep her half of the house.
6 Full stop. All right. I mean, maybe we would be having the
7 conversation but just on how do you sell half a house? And
8 so --

9 MR. NATBONY: That's what I said.

10 THE COURT: Yeah. So I'm just --

11 MR. NATBONY: Yeah. I mean, I still --

12 THE COURT: Yeah.

13 MR. NATBONY: I'm sorry, Your Honor. I did not mean
14 to --

15 THE COURT: I was just trying through the practical
16 parts. I thought maybe I was missing something.

17 MR. NATBONY: No. But I --

18 THE COURT: And so it has to be an all or nothing.

19 MR. NATBONY: No. I mean, I still think there is --
20 I mean, I'm not sure what is the stop to selling the entire
21 house and giving to Mrs. Mirvis the portion that is her
22 interest. I mean, otherwise --

23 THE COURT: Well, but you couldn't do -- could you
24 do that if -- let's rewind the clock and do a --

25 MR. NATBONY: I would suggest --

1 THE COURT: -- account of factual history. Right.

2 So let's --

3 MR. NATBONY: Okay.

4 THE COURT: -- do account of factual exercise.

5 Suppose -- the record is undisputed that Mr. and Mrs. Mirvis
6 have lived in this house since 1999 and they are co-owners of
7 the house, right? And so let's assume -- and let's assume
8 that they just kept doing that. All right. And let's assume
9 they didn't try to do any of this funny business with the
10 daughter and so giving her the house for \$10. And so let's
11 assume they're just living there peacefully and you've got
12 your judgment and you want to collect on your judgment and
13 you -- you're having trouble finding bank accounts and other
14 things. Okay. So could you then come to the Court and ask
15 the Court to sell the entire house even though Mrs. Mirvis has
16 the -- her interest?

17 MR. NATBONY: Okay. Two points on that. First of
18 all, I would think that the CPLR -- I think it's 5240 or just
19 off the top of my head -- just as it gives discretion that
20 Mr. Tsirelman has suggested you exercise, would give you
21 discretion to fashion a remedy but would allow that.

22 Secondly, if what Your Honor is suggesting would be
23 true then in essence fraudsters can insulate, you know, the
24 ability to execute on property merely by entering into
25 tenancies by the entirety. And I --

1 THE COURT: Only if they had extreme foresight and
2 did something 20 years ago.

3 MR. NATBONY: Well, but the point --

4 THE COURT: Right?

5 MR. NATBONY: But the point is that that would
6 essentially say the tendency by the entirety, you know, as a
7 *per se* rule, you know, are off base.

8 THE COURT: But that --

9 MR. NATBONY: But I don't think that's --

10 THE COURT: That may be in certain circumstances,
11 which is the point of tendencies in the entirety, right?

12 MR. NATBONY: Right. But I --

13 THE COURT: For marital homes. I'm just thinking
14 out loud.

15 MR. NATBONY: No, no, no. I hear you.

16 THE COURT: Because of -- just trying to figure out
17 where the fault lines are here, right? So if they hadn't
18 engaged in the fraudulent conveyance/attempt they may well be
19 protected or not because the only reason -- the only way we
20 get Mrs. Mirvis's share is because you said she engaged in the
21 fraud -- in the fraudulent conveyance.

22 MR. NATBONY: That's correct.

23 THE COURT: Right. So if she hadn't, the reverse
24 may well be true or not. If she hadn't, then life would go on
25 for them.

1 MR. NATBONY: The only point I would reiterate again
2 is I still think that the CPLR provision --

3 THE COURT: Right.

4 MR. NATBONY: -- would give Your Honor discretion to
5 find a remedy --

6 THE COURT: To fi -- to -- okay.

7 MR. NATBONY: -- to protect the judgment creditor as
8 well.

9 THE COURT: Right. And that's what I'm asking for
10 some help in because I don't --

11 MR. NATBONY: Okay.

12 THE COURT: I don't know what that remedy would look
13 like and that's why I -- I've got this binary --

14 MR. NATBONY: Yeah. No, I hear you.

15 THE COURT: -- choice in my head, which is that it's
16 an all or nothing. If there's a different way I'd like to
17 hear it. I'm not saying that's how I'm going to rule. I just
18 want to make sure I'm thinking through all the options because
19 all or nothing --

20 MR. NATBONY: May I have a moment?

21 THE COURT: Sure.

22 [Pause in the proceedings.]

23 MR. NATBONY: So I appreciate Your Honor's
24 [indiscernible] and I'm not sure that I have an immediate
25 solution.

1 THE COURT: Okay.

2 MR. NATBONY: I can try to be creative and submit
3 something to Your Honor if you wanted in a couple of days.

4 THE COURT: Yeah. I -- yeah, you don't need to be
5 creative. I'm just --

6 MR. NATBONY: I mean, I'm just --

7 THE COURT: -- wondering if I'm missing something.

8 MR. NATBONY: Right. I mean, I -- so that -- that I
9 think is where I am. I'm not sure I have something off the
10 top of my head that would help you in that regard.

11 THE COURT: Okay. All right. Thank you.

12 So likewise, Mr. Tsirelman, if -- do you think it's
13 an all-or-nothing proposition or do you think there's
14 something that can be done halfway because your -- your
15 clients may have an argument that they're not the judgment
16 debtors but Mr. Mirvis certainly is, you know. His --

17 MR. TSIRELMAN: Correct, Your Honor.

18 THE COURT: His assets are subject to collection and
19 so I wonder if you think -- if you can think of a way that
20 enables the judgment creditors to get what the Court -- what
21 the law says they're entitled to and protect your clients
22 nevertheless.

23 MR. TSIRELMAN: Your Honor, the law in New York
24 is -- there is a possibility and I've mentioned that before in
25 my opening arguments. But to be frank, what the law allows

1 the creditor is really not worth a lot so they can -- there is
2 an option. They can sell his present posse -- it's called
3 present possessory interest and right to survivorship. And
4 the new purchaser would become a tenant in common. So the
5 tenant -- the tenancy by the entirety would be extinguished
6 and the purchaser would become a tenant in common with the
7 wife. They'd both be tenants in common. But because that
8 interest itself really doesn't have a lot of value, to be
9 frank, so --

10 THE COURT: Who would want to have that?

11 MR. TSIRELMAN: Right.

12 THE COURT: Right.

13 MR. TSIRELMAN: Right. So -- and this is why the
14 courts have fashioned the remedies pursuant to CPLR 5240 and
15 said you already have -- the law protects you in a lien on the
16 judgment on the house and should the wife predecease the
17 husband you can have the whole thing.

18 THE COURT: Okay.

19 MR. NATBONY: We were thinking, Your Honor,
20 somewhere along the same line as Mister --

21 MR. TSIRELMAN: Right.

22 MR. NATBONY: -- Tsirelman was. If there is always
23 the possibility of actually selling the half interest.

24 THE COURT: Well, what -- what's the market for
25 that?

1 MR. NATBONY: I -- I'm not -- I mean, I -- you know,
2 I -- you know, I mean, I suppose if -- you know, if the desire
3 here is to keep the family intact, then I guess there are some
4 family members that may want to purchase that half. I mean,
5 you've got the high-end real estate --

6 THE COURT: Well, so let's play this out.

7 MR. NATBONY: Okay. But I'm just --

8 THE COURT: Okay. So -- and so --

9 MR. NATBONY: I'm trying to be creative here --

10 THE COURT: Yeah. So if --

11 MR. NATBONY: -- as Your Honor has suggested.

12 THE COURT: If that were to happen --

13 MR. NATBONY: Yeah.

14 THE COURT: -- and a family member came forward,
15 it's an auction so highest bidder wins, right? So let's
16 assume there are no other bidders. So it's a family member
17 that buys. Let's assume that the value is super low then what
18 do you get?

19 MR. NATBONY: Yeah. I -- no, I hear you, Your
20 Honor, which is again why I think that given the history here
21 and given continued efforts to evade payment of this judgment
22 that it should be an all as opposed to a nothing decision.
23 And if you go back and look again at some of the 5240 cases
24 that Mr. Tsirelman relies on, you know, I spoke about some of
25 them being in -- included in agreement to pay, you know, going

1 forward, others that showed real hardship, which has not been
2 shown here. Another group of cases that were out there were
3 when the creditor had not in the past taken actions to enforce
4 against the judgment so that it was a huge surprise, right, to
5 the potential debtor, you know, and a situation they could not
6 have anticipated.

7 This is a situation that they certainly should have
8 anticipated and for -- and Allstate certainly has not been in
9 the position where it has lacked enforcement activity. It has
10 done everything it humanly can, or corporate entities that
11 can, to move this thing forward.

12 THE COURT: Is there anything on the record as to
13 when Tatyana and her family moved into the house?

14 MR. NATBONY: One second.

15 [Pause in the proceedings.]

16 I'm looking, Your Honor. I don't see a specific
17 date. Yeah. And by the way, just so that Your Honor knows,
18 in this document 459-1 that I referred --

19 THE COURT: Yes.

20 MR. NATBONY: -- Tatyana also testified that their
21 family income -- and admittedly it goes back a few years --
22 was well into the high six figures.

23 THE COURT: Okay.

24 MR. NATBONY: You know, in 2014, 2015. So they
25 clearly were making more than a dollar.

1 THE COURT: Okay.

2 MR. TSIRELMAN: Your Honor --

3 THE COURT: Yes.

4 MR. TSIRELMAN: That's hearsay evidence but
5 Mr. Mirvis said that -- that Tatyana moved in in 1999 with
6 them when they bought the house.

7 THE COURT: But there's no evidence of that?

8 MR. TSIRELMAN: Correct. That's fine. I --

9 THE COURT: Yes.

10 MR. TSIRELMAN: I prefaced that with a hearsay
11 exception.

12 THE COURT: To be given whatever weight by the
13 Court, if any?

14 MR. TSIRELMAN: Correct.

15 THE COURT: Okay. All right. Is there anything
16 else anybody wants to add?

17 MR. NATBONY: No, Your Honor.

18 MR. TSIRELMAN: No, Your Honor. Thank you.

19 THE COURT: Mr. Mirvis, anything from you?

20 MR. MIRVIS: No, Your Honor.

21 THE COURT: Okay. Hold on a second, so I didn't
22 miss anything.

23 [Pause in the proceedings.]

24 All right. Great. So I will take this under
25 advisement and issue a written decision.

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MR. NATBONY: Thank you, Your Honor.

THE COURT: All right. Thank you very much.

MR. TSIRELMAN: Thank you, Your Honor.

(Proceedings concluded at 12:45 p.m.)

* * * * *

1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

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6 _____
7 Ruth Ann Hager, C.E.T.**D-641

8 Dated: February 18, 2020
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